

PROBATE & ESTATE PLANNING SECTION

December 9, 2011

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Mr. Corbin R. Davis, Clerk
Michigan Supreme Court
PO Box 30052
Lansing, Michigan 48909

Re: Proposed Rule Change to MCR 5.801 and MCR 7.101

Dear Mr. Davis:

On behalf of the Court of Appeals, Michigan Judges Association ("MJA"), the Michigan Probate Judges Association ("MPJA") and the Council of the Probate & Estate Planning Section ("Probate Council"), please find attached proposed rule changes to MCR 5.801 with conforming changes to subchapter 7.100. Our proposal would direct all appeals of Probate Court orders to the Court of Appeals instead of the current bifurcation of probate appeals between the Circuit Court and the Court of Appeals. We believe this streamlined process will save on court resources and secure greater access to justice for appellants.

This proposal was originally drafted by a Probate Council committee that included probate practitioners, a Staff Attorney from the Court of Appeals, the Oakland County Probate Court Administrator, and the Chief Probate Court Judge of Kent County. The proposal was reviewed, reworked and approved by the governing bodies of each stakeholder signing below.

Please contact any one of us with questions you may have. We appreciate the opportunity to participate in this process.

Very truly yours,

Hon. Elizabeth L. Gleicher
Chair, Rules Committee
Court of Appeals

Hon. Timothy G. Hicks
President
Michigan Judges Association

Hon. Karen A. Tighe, President
Michigan Probate Judges
Association

Marlaine C. Teahan, Chair
Court Rules, Procedures and Forms
Committee
Probate & Estate Planning Council

Enclosures: Clean and Redlined version of proposed MCR changes and
Public Policy Position of the Probate Council

Via email to: MSC_Clerk@courts.mi.gov

PROPOSED RULE CHANGES
MCR 5.801
Redlined Proposed Version

Rule 5.801 Appeals from the Probate Courtto Other Courts

(A) Right to Appeal. ~~An interested person~~ **General Provisions.** A party to a civil action or an interested person in a proceeding aggrieved by an order of the probate court may appeal as provided by this rule.

(B) Right to Appeal. Orders Appealable to Court of Appeals. ~~Orders appealable of right to the Court of Appeals are defined as and limited to the following:~~

~~(1) a~~ A final order affecting the rights or interests of a party to a civil action

~~(2) a final order affecting the rights or interests of an interested person in a proceeding in the probate court is appealable as a matter of right to the Court of Appeals. A probate court order is "final" if it qualifies as a final order under MCR 7.202(6)(a), or if it affects with finality the rights or interests of a party or an interested person in the subject matter, involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:~~

- ~~(a) appointing or removing a personal representative, conservator, trustee, or trust protector as referred to in MCL 700.7103(n), or denying such an appointment or removal;~~
- ~~(b) admitting or denying to probate of a will, codicil, or other testamentary instrument;~~
- ~~(c) determining the validity of a governing instrument;~~
- ~~(d) interpreting or construing a testamentary instrument or inter vivos trust;~~
- ~~(e) approving or denying a settlement relating to a governing instrument;~~
- ~~(f) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;~~
- ~~(g) granting or denying a petition to consolidate or divide trusts;~~
- ~~(h) discharging or denying the discharge of a surety on a bond from further liability;~~
- ~~(i) allowing, disallowing, or denying a claim;~~
- ~~(j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;~~
- ~~(k) authorizing or denying the continuation of a business;~~
- ~~(l) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;~~
- ~~(m) authorizing or denying rights of election;~~
- ~~(n) determining heirs, devisees, or beneficiaries;~~
- ~~(o) determining title to or rights or interests in property;~~
- ~~(p) authorizing or denying partition of property;~~
- ~~(q) authorizing or denying specific performance;~~
- ~~(r) ascertaining survivorship of parties;~~

(s) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
(t) granting or denying a petition to determine *cy pres*;
(u) directing or denying the making or repayment of distributions;
(v) determining or denying a constructive trust;
(w) determining or denying an oral contract relating to a will;
(x) allowing or disallowing an account, fees, or administration expenses;
(y) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
(z) determining or directing payment or apportionment of taxes;
(aa) distributing proceeds recovered for wrongful death under MCL 600.2922;
(bb) assigning residue;
(cc) granting or denying a petition for instructions;
(dd) authorizing disclaimers;
(ee) allowing or disallowing a trustee to change the principal place of a trust's administration;

(3) other appeals as may be hereafter provided by statute.

(C) Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:

(1) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding;

(2) a final order affecting the rights or interests of a person under the Mental Health Code, except for a final order affecting the rights or interests of a person in the estate of an individual with developmental disabilities.

(D) **Interlocutory Orders.** An interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the Court of Appeals circuit court and only by leave of that court. The Court of Appeals circuit court shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

(E) **Transfer of Appeals From Court of Appeals to Circuit Court.** If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.

(F) **Appeals to Court of Appeals on Certification by Probate Court.** Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for

~~difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.~~